



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 15th day of November 1996

Fast Air Carrier, S.A.

**Violations of 49 U.S.C. § 41302 and
Orders 94-5-24 and 96-8-18**

CONSENT ORDER

Fast Air Carrier, S.A., a Chilean air carrier, operated a number of flights between Miami and points in Brazil earlier this year without requisite economic authority from the Department, in violation of 49 U.S.C. § 41302. The flights were conducted under the name of a U.S. carrier holding charter allocations in the U.S.-Brazil market, and the aircraft and crews were supplied by U.S. direct air carriers which had wet lease agreements with either Fast Air or the U.S. carrier holding the charter allocations. The Chilean carrier did most of the marketing of the service to shippers, accepted payments from shippers and paid the wet lessors, both for the wet leases in which it was the nominal lessee and in those instances in which the U.S. carrier was the putative lessee. These flights are serious violations of Fast Air's operating authority and, moreover, violate the cease and desist provisions of two recent consent orders, Orders 94-5-24 and 96-8-18, entered against Fast Air.¹

The Office of Aviation Enforcement and Proceedings (Enforcement Office) believes that Fast Air's violations of its permit authority warrant enforcement action. As the third instance in which Fast Air has violated its permit authority, Department rules, and federal aviation statutes in the last three years, the Enforcement Office believes significant measures are appropriate. In order to avoid litigation, Fast Air has agreed to the issuance of this order to cease and desist and the findings made below.

By this order, Fast Air is assessed \$200,000 in compromise of potential civil penalties otherwise assessable under 49 U.S.C. § 43601, reflecting its violations of 49 U.S.C. § 41302 and the cease and desist provisions of Order 94-5-24 and Order 96-8-18, the prior consent orders against Fast Air. Of this amount, \$100,000 shall be paid within 15 days of the service date of this order, at which time the carrier shall also pay the suspended portion

¹ Order 96-8-18, which assessed a \$60,000 civil penalty, related to unauthorized wet lease service conducted by Fast Air for Export Air del Peru in 1995 and 1996. Fast Air, in that instance, violated 14 CFR Part 212, 49 U.S.C. § 41302 and the other prior consent order, Order 94-5-24, which assessed a \$4,000 civil penalty for similar unauthorized flights. Both orders included provisions directing the carrier to cease and desist from further similar violations. Order 96-8-18 suspended one half of the assessed civil penalty if no further violations occurred over the next two years and provided a payment schedule for the \$30,000 to be paid.

of the civil penalty assessed by Order 96-8-18.² The remaining \$100,000 of the penalty assessed in this order shall be suspended for one year following the service date of this order and shall be forgiven unless Fast Air fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. §41302 or this order during that period, in which case the entire unpaid portion of the \$200,000 assessed penalty shall become due and payable immediately. The Enforcement Office believes that the assessment of this civil penalty is warranted in light of the serious nature of the continuing violations in question and that office points out that future violations by Fast Air of its permit authority may warrant steps by that office seeking revocation of the carrier's authority to operate to the U.S. We believe this order will provide an incentive to foreign air carriers to comply fully with the requirements of 49 U.S.C. §41302 in the future.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.22.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as in the public interest;
2. We find that Fast Air Carrier, S.A., violated 49 U.S.C. §41302 and Orders 94-5-24 and 96-8-18 by its foreign air service, operated between Miami and points in Brazil using the charter allocations of a U.S. carrier;
3. We order Fast Air Carrier, S.A., to cease and desist from further violations of 49 U.S.C. §41302;
4. Fast Air Carrier, S.A. (Fast Air), is assessed \$200,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 of this order. Of this amount, \$100,000 and the suspended portion of the civil penalty assessed in Order 96-8-18 (i.e. \$30,000) shall be paid within 15 days of the service date of this order³; the remaining \$100,000 of the penalty assessed in this order shall be suspended for one year following the service date of this order and shall be forgiven unless Fast Air fails to comply with the payment provisions of this order or commits other violations of 49 U.S.C. §41302, 14 CFR Part 212 or this order, during that period, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and Fast Air may be subject to further enforcement action; and
5. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed wire," to the account of the U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Fast Air to the assessment of interest, penalty and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service unless a timely petition for review is filed or the Department takes review on its own motion.

² By this order we are requiring immediate payment of the \$30,000 penalty conditionally suspended in Order 96-8-18; however, the schedule set in Order 96-8-18 for payment of the \$30,000 unsuspended penalty will remain in effect.

³ The payment of the \$30,000 unsuspended civil penalty assessed in Order 96-8-18 shall continue to be paid in accordance with the schedule and other terms contained in that order.

By:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)